APPEARING PRO SE:
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IN THE
INDIANA TAX COURT

BRIAN SULLIVAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cause No. 49T10-0101-TA-1
	)	
INDIANA DEPARTMENT OF STATE REVENUE,	)	
	)	
	)	
Respondent.	)	
	)	

ORDER ON PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT

NOT FOR PUBLICATION
July 14, 2005

FISHER, J.

Brian Sullivan (Sullivan) appeals the final determination of the Indiana Department of State Revenue (Department), denying his claim for a refund of Indiana gross retail tax (sales tax). The matter is currently before the Court on the parties' cross motions for summary judgment. The sole issue for the Court to decide is whether Sullivan is entitled to a refund of sales tax paid on telecommunication services received via satellite. For the following reasons, the Court now GRANTS Sullivan's motion for summary judgment and DENIES the Department's motion.

FACTS AND PROCEDURAL HISTORY

The facts in this case are undisputed. Sullivan entered into a subscription contract with DISH Network for the purchase of direct broadcast satellite television programming. As a result, Sullivan received satellite programming, originating from DISH Network's Worldwide Digital Broadcast Center (Broadcast Center) located in Cheyenne, Wyoming. At the Broadcast Center, video, audio and data information is combined into a digital stream and then sent to various satellites in space. The satellites relay the programming stream to DISH Network subscribers throughout the United States, including customers in Indiana.

Based on his contract, DISH Network sent Sullivan a bill for the first two months of programming, which also included a $5.69 sales tax charge. Sullivan paid the tax and subsequently filed a claim for refund with the Department on January 27, 2000. On October 4, 2000, the Department issued its order denying the claim. Sullivan filed an original tax appeal on January 2, 2001. The Court held a hearing on August 14, 2002. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

Standard of Review

This Court hears appeals from denials of refunds by the Department *de novo* and therefore is not bound by the evidence or the issues raised at the administrative level. IND. CODE ANN.§ 6-8.1-9-1(d) (West Supp. 2004-2005); *Chrysler Fin. Co. v. Indiana Dep't of State Revenue*, 761 N.E.2d 909, 911 (Ind. Tax Ct. 2002), *review denied*. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule

56(C). Cross motions for summary judgment do not alter this standard. *Chrysler Fin.*, 761 N.E.2d at 911.

Discussion

Sullivan claims he is entitled to a refund of sales tax paid on the purchase of satellite programming, originating in Wyoming and terminating in Indiana. Indiana imposes a sales tax on certain retail transactions made in Indiana.[1] Specifically, Indiana Code § 6-2.5-4-6(b) states, "[a] person is a retail merchant making a retail transaction when the person: (1) furnishes or sells an intrastate telecommunication service; and (2) receives gross retail income from billings or statements rendered to customers." IND. CODE ANN. § 6-2.5-4-6(b) (West 2000) (amended 2002, 2004). "'[T]elecommunication services' means the transmission of messages or information by or using wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities." A.I.C. § 6-2.5-4-6(a).

While the parties agree that the satellite transmissions in this case are in fact telecommunication services, they disagree as to whether the services are taxable under Indiana Code § 6-2.5-4-6(b). Sullivan argues that the service is an interstate, rather than intrastate, telecommunication service and therefore is not subject to taxation. The Department, on the other hand, argues that telecommunication services via satellite could never truly be intrastate and thus all satellite transmissions sent to Indiana should be within the purview of the statute.

[1] Indiana Code § 6-2.5-2-1 states: "[a]n excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana. [] The person who acquires property in a retail transaction is liable for the tax on the transaction[.]" IND. CODE ANN. § 6-2.5-2-1 (West 2000). *See also* IND. CODE ANN. § 6-2.5-1-2 (West 2000) ("'[r]etail transaction' means a transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1, . . . or that is described in any other section of IC 6-2.5-4").

The Department reasons that even if satellite signals originated and terminated in the same state, the signals, by definition of a satellite, leave the originating state and travel into outer space, outside of Indiana. (*See* Resp't Br. at 6-7.) Consequently, the Department posits that because the General Assembly intended to tax satellite transmissions, the term "intrastate" was not meant to apply to satellite transmissions, but rather to the other forms of telecommunication services. (*See* Resp't Br. at 7-8.) The Department, therefore, asks the Court to construe Indiana Code § 6-2.5-4-6(b) to that effect.

The Court previously dealt with a similar issue in *Grand Victoria Casino and Resort, LP v. Indiana Department of State Revenue*, 789 N.E.2d 1041 (Ind. Tax Ct. 2003). In that case, the taxpayer was denied a refund of sales tax paid on the sale of satellite programming, which originated in Kentucky and terminated in Indiana. The Department argued that the satellite transmissions were neither interstate nor intrastate, but rather cosmic since the signal was transmitted from outer space to Indiana. *Grand Victoria*, 789 N.E.2d at 1045 n.4. Accordingly, the Department claimed the Court should construe the term "intrastate" in Indiana Code § 6-2.5-4-6(b) to include cosmic transmissions. *Id*. The Court stated, however, "the Department's concentration on satellites misses the point, namely, that the transmissions in question originated in Kentucky—not the cosmos—and terminated in Indiana." *Id*. The Court also noted that the "law provides that the transmission in question must be 'intrastate,' which means

that the transmission must originate and terminate within Indiana [to be taxed]."[2] *Id*. at 1045 (footnote added).

In the case at bar, the fact that the transmissions originated in Wyoming and terminated in Indiana is undisputed. In light of that fact and the holding in *Grand Victoria*, the satellite transmissions are not intrastate telecommunication services, but rather interstate and outside the ambit of the statute. *See id.* The legislature chose not to explicitly exclude satellite transmissions from the "intrastate" qualification, and thus the Court cannot now make that exclusion. *See C & C Oil Co. v. Indiana Dep't of State Revenue*, 570 N.E.2d 1376, 1380 (Ind. Tax Ct. 1991) ("When the language of a statute is plain and unambiguous, the court has no power to construe the statute for the purpose of limiting or extending its operation") (citation omitted).

[2] *See Chicago & E. I. Ry. Co. v. Pub. Serv. Comm'n of Indiana*, 186 N.E. 330, 336 (Ind. 1933) (holding that "[i]f the movement [of a commodity] is wholly within the state, it is intrastate"); *City of South Bend v. Martin*, 41 N.E. 315, 317 (Ind. 1895) (noting that commerce and trade that are "entirely confined within the boundaries of the state of Indiana" are intrastate); BLACK'S LAW DICTIONARY 285 (8th ed. 2004) (defining "intrastate commerce" as "[c]ommerce that begins and ends entirely within the borders of a single state").

CONCLUSION

Because the telecommunication services in question are not intrastate transmissions, Indiana's sales tax does not apply to them. Accordingly, Sullivan is entitled to a refund of the sales tax paid on the purchase of the satellite programming. For the foregoing reasons, the Court GRANTS Sullivan's motion for summary judgment and DENIES the Department's motion.

SO ORDERED this 14th day of July, 2005.

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Thomas G. Fisher, Judge
Indiana Tax Court

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